



PERMIT TO CONDUCT RIGHT-OF-WAY TREATMENT

Permit number: ROW 2023-RR01

Effective April 10, 2023

Office of the Secretary, Anson B. Tebbetts

www.agriculture.vermont.gov

116 State Street • Montpelier, Vermont 05620-2901 • (802) 828-5667 • (802) 828-1410 fax

Permittee: Vermont Railway, Inc. 118 Post Street Rutland, Vermont 05701 (802)775-4356
[Contact Person: R.T. Boucher]

Permit conditions:

1. The permittee shall contact the Agency of Agriculture, Food and Markets (the Agency) one business day prior to initiating this permit.
2. Each application crew, including sub-contractors, working under this permit shall coordinate one use inspection with the Agency.
3. This permit authorizes the use of pesticides in the railroad ballast during this calendar year in the towns of Burlington, South Burlington, Shelburne, Charlotte, Vergennes, Ferrisburgh, New Haven, Middlebury, Salisbury, Leicester, Brandon, Pittsford, Rutland Town, Rutland City, Clarendon, Wallingford, Danby, Dorset, Manchester, Sunderland, Arlington, Shaftsbury, Bennington and Mount Tabor. This permit does not allow for treatment to control terrestrial invasive plant species unless required for operator or worker safety, public health needs, or in compliance with specified conditions in appendix of this permit. This permit in no way authorizes the applicant to use pesticides on real estate where it has no lawful right to do so.
4. Ballast maintenance activities, defined as the mechanical plowing, brooming, tamping or regulating of treated stone ballast, are prohibited for 30 days or until one inch of rain has fallen following application, unless the application is a glyphosate-only application. Ballast maintenance activities are prohibited for five days after a glyphosate-only application.
5. All distances described in this permit are horizontal (lateral) measurements.
6. The spray width shall be no greater than 12 feet from either side of the centerline of the tracks or no greater than the width of the ballast, or as specified below.

Where safe, practical, **and** consistent with other buffers and conditions required by this permit:

- a. The spray width at public and designated private *road crossings* will extend 24 feet from centerline on either side for 300 feet preceding and 300 feet proceeding the crossing.
- b. The spray width for *whistle posts or way-side indicators* shall be no greater than 12 feet from centerline on the opposite side of the rail from the whistle post or way-side indicator. The spray width may extend out to a maximum width of 24 feet on the side of the whistle post or way-side indicator. This extended width may begin no farther than 20 feet preceding the whistle post or way-side indicator and end no later than 20 feet following the whistle post or way-side indicator.
- c. The spray width for *mile posts* shall be no greater than 24 feet from centerline. Applications of up to this extended width of 24 feet may begin no farther than 20 feet preceding the mile post and end no later than 20 feet following the mile post.
- d. Applications around signal cases and masts, stored material and railroad yard applications must be in accordance with the product label.

7. At least one certified applicator shall be a member of each application crew. All label recommendations and requirements for protective clothing shall be adhered to for all applicators.
8. Proof of public notification as detailed in the permit application shall be provided to the Agency, upon request, as proof that the notification occurred (e.g., copies of newspaper tear sheets, invoices).
9. Pesticides shall not enter the waters of the State. Buffers to water are as follows, unless the product label prescribes a greater buffer:
 - a. Applications made **parallel** to surface water shall have a visible limit of 10 feet from the edge of the water when spraying glyphosate-only products, or a visible distance of 15 feet when spraying any other permitted products or mixture thereof.
 - i. In areas where the parallel water's edge is less than 10 feet, but farther than two feet from the shoulder, only aquatically labeled glyphosate-only applications may be within the railroad tie (tie end-to-tie end).
 - b. Applications made at a surface water **crossing** shall have a visible limit of 30 feet from the water's edge.
 - c. Aquatically labeled glyphosate products may be applied up to two feet from the edge of water crossings, bridge abutments or culverts containing water, by hy-rail application equipment traveling at two miles per hour.
10. Public and potable water sources (non-public water systems) are to be avoided.
 - a. Applications to soil or vegetation shall not be made within 200 feet of public community drinking water sources and intakes, and surface water public non-community drinking water intakes.
 - b. Applications to soil or vegetation shall not be made within 100 feet of public non-community groundwater drinking water sources.
 - c. Applications to soil or vegetation shall not be made within 50 feet of a potable water source identified through well owner notification to Permittee.
 - d. Notwithstanding the above, a limited application made only to the stone railroad ballast and tie surfaces when necessary to the safe operation of passenger and freight rail consistent with federal regulatory requirements is not prohibited.
11. A copy of this permit and accompanying digital or electronic maps shall be provided to the applicator for use during applications. The maps shall be derived from data from the Vermont ANR Atlas, well owner notifications to Permittee, and confirmed field observations to identify surface waters and both the public and potable water sources to be avoided during applications.
12. Routine operational records as required by the Vermont Rule for the Control of Pesticides shall be submitted by the pesticide applicator to the Agency of Agriculture on a weekly basis.

Records shall be submitted electronically to:

Morgan.Griffith@vermont.gov

13. The following pesticides may be applied at the rates listed below and in accordance with the label:

| Product name | EPA registration number | Rate not to exceed |
|--|---------------------------------|---|
| Aquaneat or Roundup Custom or Diquat SPC 2L | 228-365 524-343 228-675 | 1 qt/acre if tank mixed (2 qt/acre if only product) 1 qt/acre if tank mixed (2 qt/acre if only product) 1 pint/acre |
| Semera or Payload | 91234-129 59639-120 | 12.0 oz/acre 12.0 oz/acre |
| Milestone | 62719-519 | 7.0 oz/acre |
| Oust Extra or Oust XP or Polaris AC Complete | 432-1557 432-1552 228-570 | 4.0 oz/acre 4.0 oz/acre 1 pint/acre |

14. Applications between Flynn Avenue and College Street in Burlington other than in the railroad yard shall be made under the following conditions:

- a. One pre-emergent application of flumioxazin-containing product. Active ingredient chosen from proposed products because of high partition coefficient and favorable toxicity profile;
- b. Spot treatment of glyphosate-containing products may be applied in this area following pre-emergent application;
- c. Application shall not occur on a weekend or holiday;
- d. Application shall be made prior to 6:00 a.m.; and
- e. The permittee shall notify the Agency 24 hours prior to application being made.

15. During the course of this permit, if plant control is not satisfactory in terms of rail safety standards, then notify the Agency for an evaluation that may result in an amended permit.

16. In the event the permittee sub-contracts or assigns any of the applications authorized by this permit, the permittee shall continue to remain responsible for the conditions of this permit. This condition does not relieve any sub-contractor or assignee from compliance.

- a. Contracted entities shall have one member of the railroad present during application, excluding applications that occur in rail yards.

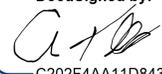
17. All operations shall be conducted in accordance with the representations made by the permittee in its permit application under these permit conditions unless, and until, the permit is amended.

18. The Secretary reserves the right to further limit or restrict the application of pesticides approved under this permit as conditions or circumstances warrant. The Secretary further acknowledges that Permittee has asserted that federal law, in particular the Interstate Commerce Commission Termination Act, 49 U.S.C. §§10501, *et seq.* (“ICCTA”), preempts any “as applied” state or local regulations that (1) discriminate against railroads; or (2) unreasonably burdens rail carriage, has specifically asserted its right and federal obligation to engage in essential railroad maintenance practices free from unreasonable regulatory interference, and agrees that submission of an application or acceptance of permit conditions by Permittee shall not constitute a waiver by Permittee of any of its rights of preemption under applicable federal law.

This permit was published for public comment and forwarded with recommendation to the Secretary.

Effective Date April 10, 2023

Expiration Date December 31, 2023

DocuSigned by:

C202F4AA11D8436...

Anson B. Tebbetts, Secretary
Agency of Agriculture, Food & Markets